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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/945,445

08/31/2001

Ian Moir

085710.P052

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12/19/2005

SMITH-HILL AND BEDELL, P.C.  
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EXAMINER

STRANGE, AARON N

ART UNIT

PAPER NUMBER

2153

DATE MAILED: 12/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/945,445

Applicant(s)

MOIR, IAN

Examiner

Aaron Strange

Art Unit

2153

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 10 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See attachment. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 53-100.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_.

***Response to Amendment***

1. The proposed amendments filed 11/10/2005 have not been entered because they raise new issues that would require further search and/or consideration. New issues raised include at least the issues cited below.
2. In claims 53 and 77, the limitation "instantiating a virtual machine...the second instruction set being a sub-set of the first instruction set" is a new limitation and was not previously considered. While it is appreciated that the amendment was made to overcome the 112 1<sup>st</sup> and second paragraph rejections of claims 75 and 99, the subject matter of which has been incorporated into independent claims 53 and 77, the scope of the claim has been significantly altered by the amendment. The previous claims 75 and 99 recited "the second instruction set is a sub-set of the third instruction set", and the "third instructions set" was not previously described in the claims or specification. Such an alteration in scope could not have been anticipated as there was no guidance in the specification from which to infer that the second instruction set was in fact a subset of a first instruction set.
3. Applicant's arguments filed 11/10/2005 with respect to claims 53 and 77 have been fully considered but they are not persuasive.
4. With regard to the 112 1<sup>st</sup> paragraph rejections of claims 75 and 99, which are now substantially claims 53 and 77, the cited portions of the specification do not appear

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to provide support for the present claim language. Applicant asserts that the “second instruction set” is the rule program 66 described in the specification. However, as pointed out by Applicant, the specification states that “the rule program 66 is executed by the virtual machine 10” (Page 33, Line 15). An executable program does not support the current limitation of an “instruction set” of a virtual machine. An “instruction set” is conventionally known as the set of instructions that may be executed by a particular device.

The “second instruction set” is being interpreted as describing a characteristic of the virtual machine, namely the instructions that it is capable of executing. If Applicant intends for the “second instruction set” to be some type of executable program that is executed by the virtual machine, the Examiner recommends that the claim be amended to recite “the virtual machine executing a rule program to configure the network connection device” or a similar limitation which would clearly show that the “second instruction set” is an executable program rather than a characteristic of the virtual machine as described in page 19 of the specification.


5. With regard to Applicant’s proposed amendment to claims 55 and 79, (Page 11, Lines 15-29 of Remarks) the proposed amendment would be sufficient to overcome the 35 USC 112, second paragraph rejection of those claims if it were presented.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Strange whose telephone number is 571-272-3959. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AS  
12/7/05



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